

AR
United States Courts
Southern District of Texas
FILED
NOV 14 2003
Michael N. Milby, Clerk

Consolidated Civil Action
No. H-01-3624

Defendants.

Defendants.

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Fenner & Smith Incorporated (collectively, "Merrill Lynch"). I submit this affidavit in support of Merrill Lynch's motion for a protective order preserving the confidentiality of certain materials (the "Confidential Materials") produced by Merrill Lynch.

2. On July 2, 2002, Plaintiffs served Merrill Lynch with their First Request for the Production of Documents. To date, Merrill Lynch has produced over 250,000 pages in response to these Requests, including the Confidential Materials (which represent a small percentage of the overall production).

3. Merrill Lynch has provided Plaintiffs with an index and copy set of the Confidential Materials, and has in good faith conferred with Plaintiffs in an effort to reach agreement on the confidential treatment of the Confidential Materials without court action.

4. Attached as Exhibit A hereto is an index of the Confidential Materials included in Merrill Lynch's production that contain personal information regarding certain non-party employees and customers of Merrill Lynch. Such information includes, for example, personnel files, social security numbers, home addresses, telephone numbers, dates of birth, and financial account numbers.

5. Attached as Exhibit B hereto is an index of the Confidential Materials included in Merrill Lynch's production that reveal sensitive business information regarding non-party clients of Merrill Lynch. These documents represent the majority of materials for which Merrill Lynch seeks confidential treatment, and include, for example, details regarding clients' confidential business models, strategic plans, investment banking costs, and credit and loan exposures.

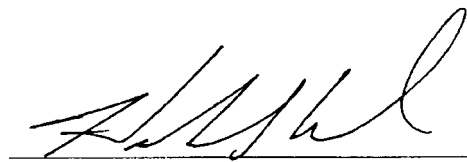
6. Attached as Exhibit C hereto is an index of the Confidential Materials included in Merrill Lynch's production that contain confidential proprietary information regarding client fee structures, practices and analyses.

7. Attached as Exhibit D hereto is an index of the Confidential Materials included in Merrill Lynch's production that contain confidential proprietary information regarding the details of proprietary transaction structures.

8. Attached as Exhibit E hereto is an index of the Confidential Materials included in Merrill Lynch's production that contain confidential proprietary information regarding internal reviews of Merrill Lynch's business performance.

9. Attached as Exhibit F hereto is an index of the Confidential Materials included in Merrill Lynch's production that contain confidential proprietary information regarding potential clients, transactions and other business strategies of Merrill Lynch.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of November 2003 at New York, New York.

A handwritten signature in black ink, appearing to read 'H. Washer', is written over a horizontal line.

HERBERT S. WASHER

The Exhibit(s) May
Be Viewed in the
Office of the Clerk